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Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

DUDLEY LUKE FOUSSELL,

Petitioner,

v.

PARKER DRILLING OFFSHORE, USA, LLC, THE MERIDIAN RESOURCES CORPORATION, and C & F OFFSHORE, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

LAWRENCE D. WIEDEMANN*
Louisiana Bar No. 13457
WIEDEMANN & WIEDEMANN
821 Baronne Street
New Orleans, Louisiana 70113
(504) 581-6180

Counsel for Petitioner

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Whether or not this Court should resolve the irreconcilable conflict between the United States Circuit Courts of Appeal regarding the degree of negligence, "featherweight" or "ordinary", necessary for an injured railway worker to prevail in a FELA claim, 45 USC §§51-61 or a seaman in a Jones Act claim, 46 USC §688. The conflict cries out for resolution by this court because the seaman "wards" of this court should not be subjected to judicial roulette, making winners in one circuit and losers in another. The Second, Third, and Ninth Circuits, support the relaxed "featherweight" burden. See *Williams v. Long Island R.R. Co.*, 196 F.3d 402, 406 (2nd Cir. 1999) openly criticizing the Fifth Circuit decision in *Gautreaux v. Spurlock Marine, Infra*, at p. 406; *Mullahon v. Union Pac. R.R.*, 64 F.3d 1358, 1364 (9th Cir. 1995); *Pierce v. Southern Pac. Transp., Co.*, 6 F.3d 603, 607 (9th Cir. 1993); *Ulfik v. Metro-North Commuter R.R.*, 77 F.3d 54, 58 (2nd Cir. 1996); *Hines v. Consolidated Rail Corp.*, 926 F.2d 262, 267 (3rd Cir. 1991); while the Fifth and Fourth Circuits support the more onerous "reasonable" standard. See *Gautreaux v. Spurlock*, 107 F.3d 331, 335 (5th Cir. 1997); *Wood v. United States*, 187 F.3d 432 (4th Cir. 1999). The resulting conflict is producing unjust and disparate results in the competing Circuits with numerous Jones Act plaintiffs, like applicant herein, being denied compensation while their fellow seamen in surrounding Circuits are granted compensation under identical factual circumstances. The social affect is catastrophic in that uncompensated seamen have no fall-back compensation scheme as do FELA injured railway workers from whom their rights are derived.

PARTIES TO THE PROCEEDING

Petitioner

DUDLEY LUKE FOUSSELL, a person of the full age of majority and a resident of Houma, Louisiana. Petitioner is an individual and has no corporate affiliations.

Respondents

Parker Drilling Offshore U.S.A., L.L.C.;

Mallard By Drilling, U.S.A., Inc.;

C&F Offshore Incorporated;

Meridian Resources Corp.

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OPINIONS BELOW

The within Jones Act/General Maritime complaint was originally filed in the United States District Court for the Southern District of Texas, Galveston Division, under Civil Action No. G-99-399 as a non-jury case under FRCP 9(h). This case, together with a number of other cases, was reassigned because of the terminal illness of the wife of Honorable Samuel B. Kent, United States District Court.

The case was transferred to Honorable Rebecca F. Doherty, United States District Judge, Western District of Louisiana, Lafayette Division.

Judge Doherty tried the case non-jury from August 7 to August 10, 2000, and on December 20, 2000, rendered a final Judgment in which she found plaintiff/applicant, Dudley Foussell, to be guilty of 75% comparative fault. *App.* pp. 4-10.

Plaintiff/applicant filed a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit. The Court on May 9, 2002, rendered judgment affirming the judgment of Judge Doherty. *App.* pp. 1-3.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered judgment on May 9, 2002. This petition for writ for certiorari is filed within the prescribed period of 90 days after May 9, 2002.

This jurisdiction of this Honorable Court is invoked under the provisions of 28 USC §§1254(1) and 2106.

STATUTORY AND REGULATORY PROVISIONS

This case involves 45 USC §51 (FELA) and 46 USC §688 (the Jones Act).

STATEMENT OF THE CASE

Dudley Luke Foussell, a semi-illiterate 42-year-old father of four children with a seventh (7th) grade rural Louisiana education, is the plaintiff/applicant herein.

On August 16, 1997, he was the 37-year old captain of the M/V MARGARET, a thirty-five (35) foot offshore crew boat owned and operated by Mallard Bay Drilling, L.L.C., defendant/respondent, under exclusive charter to Parker Drilling U.S.A., Inc.

The M/V MARGARET operated between Matagorda Bay, Texas, and Parker Rig 23 in the Gulf of Mexico.

C&F Offshore, Incorporated, was under contract with Parker to dispatch vessels to, and from, Rig 23 to Matagorda Bay and receive, and load, material on said vessels at Matagorda Bay.

On August 15, 1997, Foussell was dispatched with the M/V MARGARET by David Serrette, Parker's toolpusher and his superior, from Rig 23 to the Matagorda Bay dock to pick up a 20-foot long 6 inch PVC pipe urgently needed on the rig. David Serrette knew that the M/V MARGARET was not equipped with exterior pipe racks, or cleats, and that the pipe, because of its length would have to be stored partially in the cabin and partially on the rear deck of the M/V MARGARET.

Parker had under charter a tugboat large enough to transport the PVC pipe safely on its deck. However, David Serrette chose to use the M/V MARGARET because it could make the trip in half the time.

David Serrette had never seen the M/V MARGARET haul pipe as long as that which it was assigned to haul on August 16, 1997.

Foussell departed the rig at approximately 11:00 o'clock a.m. and arrived at the dock at Matagorda Bay one and one-half hours later. After tying up the M/V MARGARET, Foussell spoke with Gary Reeves, the C&F dispatcher, about the pipe which had not yet arrived to be loaded onto the vessel.

At approximately 4:00 o'clock that afternoon, the pipe was delivered to the dock. The pipe was too heavy for Foussell to lift by himself, so he and the delivery driver loaded it onto the M/V MARGARET. They loaded the pipe lengthwise onto the M/V MARGARET placing one end in the cabin and one on the rear deck.

Foussell was told by Reeves to wait at the dock because there was other equipment to be delivered and loaded on the M/V MARGARET for transportation to Rig 23 with the pipe already aboard the vessel.

Sometime during the night, or the early morning hours, David Serrette, the toolpusher, decided that he no longer needed the pipe that had been loaded on the M/V MARGARET. He called Gary Reeves on the radio and advised him to unload the 20-foot length of PVC pipe from the M/V MARGARET. Neither Gary Reeves, nor David Serrette, conveyed this information to Dudley Foussell, the captain of the M/V MARGARET, although they had

radio capability of communicating with the M/V MARGARET.

At approximately 6:00 a.m. on August 16, 1997, Gary Reeves, with a helper, went aboard the M/V MARGARET, without the knowledge of Foussell and began pulling the pipe out of the cabin at which time it struck Foussell in the head. Foussell had been lying on a bunk in the cabin and had sat up to put on his shoes when he heard noise on the rear deck.

The Lower Court found Foussell to be 75% at fault for the occurrence of the accident.

The United States Fifth Circuit Court of Appeals affirmed the judgment of the Lower Court.

REASONS FOR GRANTING THE WRIT

I. THE IRRECONCILABLE CONFLICT BETWEEN THE UNITED STATES CIRCUIT COURTS OF APPEALS REGARDING THE DEGREE OF NEGLIGENCE "FEATHERWEIGHT" OR "ORDINARY" PREREQUISITE TO RECOVERY BY A RAILWAY WORKER UNDER FELA, OR A SEAMAN UNDER THE JONES ACT AND GENERAL MARITIME LAW.

The Circuit Court conflict may, at first blush, seem insignificant and not worthy of this Court's consideration. However, in Circuits, like the Fifth, and Fourth, where the more onerous "ordinary" standard is utilized, disabled seamen "wards" of this Court and disabled railway workers are daily being denied recovery and forced to seek treatment at charity hospitals and meager sustenance

through Social Security disability. On the other hand in the Second, Third, and Ninth Circuits, the disabled railway workers are being granted full recovery under the "slightest", "featherweight", standard. The foregoing undesirable effects in the Fourth and Fifth Circuits put the responsibility for the disabled seaman on the shoulders of the American taxpayers instead of on the shoulders of the employer beneficiaries of their labors.

The Lower Court, and the Appellate Court herein, did not directly address the conflict posed herein but in finding the plaintiff/petitioner 75% contributorily at fault could only have done so by invoking the more stringent burden.

Plaintiff/petitioner was the captain of the M/V MARGARET, a 35-foot crew boat owned by his employer, Mallard Bay Drilling, L.L.C., defendant/respondent herein. The vessel was under exclusive contract with Parker Drilling Offshore, U.S.A., L.L.C., defendant/respondent, to service and supply Parker's Rig 23 in the Gulf of Mexico. C&F Offshore Incorporated, defendant/respondent, was under contract with Parker to furnish dispatching, and loading vessels for Parker in Matagorda, Texas

Parker's toolpusher, and plaintiff/petitioner's superior, David Serrette, dispatched the M/V MARGARET from Parker Rig 23 in the Gulf of Mexico to Matagorda Bay, Texas, to pick up a 25 foot length of PVC pipe urgently needed on the rig. David Serrette knew that the M/V MARGARET did not have an external rack for transporting pipe. He also knew that there was a tug available to transport the pipe safely but chose the M/V MARGARET because of the difference in speed and the critical need of

the pipe on Rig 23. He knew that the pipe would have to be placed in the cabin and on the rear deck because of the length of the pipe, the size of the vessel, and the absence of external pipe racks.

The pipe was delivered to the dock at approximately 4:00 o'clock on the afternoon of August 15, 1997, and was loaded onto the M/V MARGARET by plaintiff with the assistance of the delivery man. One end of the pipe was placed in the cabin and the other end on the rear deck.

Gary Reeves, the C&F dispatcher for Parker, instructed plaintiff/petitioner to remain at the dock because there was other equipment that needed to be loaded and delivered to Rig 23.

Sometime during the night, or early morning hours, David Serrette, Parker's toolpusher, decided that he did not need the PVC pipe and told Gary Reeves, the C&F dispatcher, to take the pipe off of the M/V MARGARET. Plaintiff/petitioner, who was lying down in the cabin, was not aware of the conversation between Serrette and Reeves. At approximately 6:00 o'clock a.m., Gary Reeves went onto the M/V MARGARET and, without warning, undertook to unload the pipe in accordance with the instruction of Serrette. He pulled the pipe from the rear deck, thereby dislodging it from its resting point in the cabin and striking plaintiff in the head.

Obviously, a seaman employee, like plaintiff/petitioner herein, could not contribute 75% of the cause of the within accident under the "slightest" standard and the abolition of assumption of the risk under the FELA and Jones Acts.

The Lower Court's conclusion, affirmed by the Appellate Court, could only have been reached in this seaman's

action by invocation of the "ordinary" standard instead of the "featherweight" standard.

The conflict originated with the Legislative language in 45 USC §51, (FELA), incorporated into 46 USC §688 (the Jones Act), which provides in pertinent part, that:

> "every common carrier by railroad . . . shall be liable in damages . . . for such injury or death ***resulting in whole or in part*** from the negligence of any of the officers, agents, and employees of such carrier." (Bold emphasis added).

This Court in *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, 506, 1 L. Ed. 2d 493, 77 S.Ct. 443, (1957) used the term "slightest" to describe the reduced standard under FELA and in *Ferguson v. Moore-McCormick Lines, Inc.*, 352 U.S., 521, 523, 1 L. Ed. 2d 511, 77 S.Ct. 457 (1957), extended the "slightest" standard to the Jones Act.

The United States Fifth Circuit Court of Appeals, prior to the decision in *Gautreaux v. Spurlock Marine, Inc.*, supra has defined the "slightest" standard as "featherweight" in *Bommarito v. Penrod Drilling Corp.*, 929 F.2d 186 (5th Cir. 1991), and the United States Ninth Circuit of Appeals in *Ribitzki v. Canmar Reading & Bates*, 111 F.3d 658 (9th Cir. 1997).

The foregoing led to the regrettable head-on conflict between the Circuits best symbolized by the decisions in *Williams v. Long Island Railroad Company*, 196 F.3d 402 (2nd Cir. 1999), and *Gautreaux v. Spurlock Marine, Inc.*, 107 F.3d 331 (5th Cir. 1997).

The Court in *Williams v. Long Island Railroad Company*, supra, at page 406, stated its position, as follows:

> "The Supreme Court has said, based on the explicit language of the statute, that with respect to causation, a relaxed standard applies in FELA cases so that an employer is liable for injuries caused 'in whole or in part' by the employer's negligence. *Rogers v. Missouri Pac. R.R. Co.*, 352 U.S. 500, 506–07, 1 L. Ed. 2d 473, 77 S.Ct. 443 (1957) (quoting 45 USC §51, which states in relevant part: 'Every common carrier by railroad while engaging in commerce between any of the several states . . . shall be liable in damages to any person suffering injury . . . or . . . death . . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier . . . . '). **While some circuits have limited the application of the 'in whole or in part' language to the element of causation and applied traditional standards to the duty of care, see e.g., *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 335 (5th Cir. 1997) (*en banc*), this circuit has explicitly stated that it construes 'the statute, in light of its broad remedial nature, as creating a relaxed standard for negligence as well as causation,'** *Ulfik v. Metro-North Commuter R.R.*, 77 F.3d 54, 58 & N.1(2d Cir. 1996) (noting that the Supreme Court has not expressly held that a relaxed standard for negligence, as opposed to causation applies under FELA) (citing *Syverson*, 19 F.3d at 825); see also *Eaton*, 398 F.2d at 741. ('There can be no doubt that under [FELA] the right of the jury to pass upon the question of fault and causality must be liberally viewed.')" (Bold emphasis supplied).

The United States Fifth Circuit Court of Appeals, on the other hand, citing this Court's decisions in *Rogers v. Missouri Pacific R.R*, 352 U.S. 500, 506, 1 L. Ed. 2d 493,

77 S.Ct. 443, (1957) and *Ferguson v. Moore-McCormick Lines, Inc.*, 352 U.S., 521, 523, 1 L. Ed. 2d 511, 77 S.Ct. 457 (1957), concluded, at page 336, as follows:

> "Nothing in these cases, then, supports the proposition that the duty of care owed is slight. **Rather, the phrase 'whole or in part' as set forth in the statute, or as it has come to be known 'slightest' modifies only the causation prong of the inquiry. The phrase does not also modify the word 'negligence'.** The duty of care owed, therefore, under normal rules of statutory construction, retains the usual and familiar definition of ordinary prudence. See *Texas Food Indus. Assoc. v. United States Dept. of Agricultural*, 81 F.3d 578, 582 (5th Cir. 1996) (stating it is a 'cardinal cannon of statutory construction ... [in interpreting a statute,] the words of a statute will be given their plain meaning.')." (Bold emphasis supplied).

To further illustrate and hone in on the problem, the Louisiana Supreme Court, accepting the decision of the United States Fifth Circuit Court of Appeals in *Gautreaux v. Scurlock Marine, Inc,*, supra, as binding on it under maritime law, and attempting to reconcile the employer's traditional obligation to provide a safe place to work to its seaman employees, in *Vendetto v. Soniat Offshore Drilling Co.*, 725 So.2d 474 (La. 1/20/99), made the following pertinent observation at page 479:

> "Nevertheless, since the duty to provide a safe place to work allocates substantial risk of maritime employment to the employer, identical conduct is not demanded of the employer and the employee. *Force*, 25 J. Mar L & C 3:19. The law allocates different risks to different parties, and that allocation forms part of the reasonableness

> equation in the negligence determination. A defendant's standard of care, like that of the plaintiff, varies according to the conduct in which the party is engaged. Frank L. Maraist & Thomas C. Galligan, Louisiana Tort Law §39-2 (1996). See also *Argus v. Scheppegrell*, 472 So.2d 573 (La. 1985). (When a doctor prescribed large amounts of drugs to a young patient known by the doctor to be a drug addict, the doctor was in a greatly superior position to avoid the risk of the patient's death from a drug overdose, and was not allowed to defeat recovery under the then rule of contributory negligence, by pleading the exact conduct by the patient that was the risk prompting imposition of the duty on the doctor not to prescribe large amounts of drugs). The determination of who has the duty to eliminate or minimize the risk of an injury-causing hazard is central to the negligence inquiry. The duty on the employer to make the workplace safe may, in a sense, impose a greater duty on the employer than the duty on the seaman to use reasonable care for his own safety."

It is suggested that this Court cannot reconcile a century of railway labor law and maritime law requiring an employer to provide a safe place to work, safe tools, safe equipment, adequate rules, adequate regulations, and an adequate crew, with a "reasonable" standard putting the employer, and employee, on the same level. The "slightest", or "featherweight", standard is the only one that comports with the intent of Congress, cognizant of the law at the time of passage of 45 USC §51. Obviously, the Congress knew that railway workers and seamen were "naked" if not able to recover under statutory law since Congress had not passed a "parachute" compensation statute. Certainly, this was not an oversight on the part of

Congress but a specific intent to give superior rights to this segment of the American labor force, recognized by this Court as "wards".

The United States Fifth Circuit Court of Appeals has vacillated from "featherweight" to "reasonable" and the evolution has, and will, reek havoc on the wards of this Court.

It is respectfully submitted that the law of the Second, Third, and Ninth Circuits should be adopted by this Court and the law of the Fifth and Fourth Circuits rejected.

CONCLUSION

It is respectfully submitted that this Honorable Court should grant a writ of certiorari and, after due proceedings, that the Judgments of the United States Circuit Court of Appeal for the Fifth Circuit and the United States District Court, Western District of Louisiana, Western Division, be reversed and this matter remanded for a new trial consistent with the burden of proof application to claims under 45 USC §51 and 46 USC §688 as defined by the Appellate decisions in the Second, Third, and Ninth Circuits best defined in *Williams v. Long Island Railroad Company, et al*, supra.

Respectfully submitted,

WIEDEMANN & WIEDEMANN
LAWRENCE D. WIEDEMANN,
Bar #13457
821 Baronne Street
New Orleans, Louisiana 70113
Telephone: (504) 581-6180

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40100

DUDLEY FOUSSELL

Plaintiff-Appellant

v.

MALLARD BAY DRILLING, INC, LLC; ET AL

Defendants

MALLARD BAY DRILLING, LLC;
PARKER DRILLING OFFSHORE USA, LLC;

Defendants-Appellees

v.

C&F OFFSHORE SERVICES, INCORPORATED

Defendant-Appellee-Appellant

Appeals from the United States District Court
for the Southern District of Texas, Galveston
USDC No. G-99-CV-399

(Filed May 9, 2002)

Before KING, Chief Judge, and SMITH and PARKER, Circuit Judges.

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Plaintiff Dudley Foussell sued defendant Parker Drilling Offshore USA, L.L.C. (Parker) for negligence under the Jones Act, 46 App. U.S.C. § 688 (Supp. 2001), and unseaworthiness of the vessel on which he was employed, as well as for recovery of unpaid maintenance and cure. Foussell also asserted a general maritime negligence claim against defendant C&F Offshore Services, Incorporated (C&F). Parker cross-claimed against C&F for indemnity with respect to Parker's payment of maintenance and cure to the plaintiff. After a bench trial, the district court determined that the accident that precipitated the suit was caused by the concurrent negligence of Foussell and Gary Reeves, an employee of C&F, and assessed comparative fault at seventy-five percent to Foussell and twenty-five percent to Reeves. The court found that no negligence or vessel unseaworthiness for which Parker was responsible contributed to cause Foussell's injuries. The court awarded damages against C&F, reduced seventy-five percent for Foussell's fault. The court also awarded Foussell certain maintenance and cure owed by Parker and allowed Parker recovery of maintenance and cure against C&F by way of indemnity.

On appeal, Foussell argues that the district court clearly erred in finding him negligent. Alternatively, he argues that the district court clearly erred in assessing his comparative fault at seventy-five percent. On brief and at oral argument, Foussell essentially reargued his view of the facts. But the evidence supports the district court's conclusion that he created a dangerous condition aboard the vessel that he captained by the unstable method that he chose to stow the pipe. Had we been the trier of fact, we might or might not have chosen to allocate seventy-five percent of the fault to Foussell, but there is simply no way

for an appellate court to conclude that the district court clearly erred in so doing.

Foussell also argues that the district court erred in finding the vessel seaworthy. He claims that because the vessel lacked side cleats and because of the relative size of the vessel and the pipe, he could not have taken the pipe aboard other than how he did. There was ample testimony, however, that there were safe (if not ideal) ways to stow the pipe, and the district court could certainly have correctly concluded (as it did) that any temporary unseaworthiness of the vessel resulted from the way that Foussell, the master of the vessel, chose to stow the pipe.

Foussell claims that the district court deprived him of a fair trial and was biased against him. We have reviewed the portions of the record that Foussell points to, and what we see is a very engaged and knowledgeable district judge doing her job well. There is no evidence of bias, and the trial was entirely fair.

Finally, the damage award was handled by the district court with the same care as the other aspects of the trial and we find no error.

The judgment of the district court is AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DUDLEY FOUSSELL	)	
VS.	)	**CIVIL ACTION NO.**
	)	**G-99-399**
PARKER DRILLING	)	**Rule 9H Admiralty**
OFFSHORE USA, L.L.C.,	)	
ET AL.	)	

FINAL JUDGMENT

This cause came on to be heard in its regular order, and Plaintiff Dudley Foussell and Defendants C&F Offshore Services, Inc. ("C&F"), Parker Drilling U.S.A. ("Parker"), and The Meridian Resources Corporation ("Meridian") appeared through their respective attorneys of record, and each party announced ready for trial. The case was filed pursuant to rule 9(h) of the Federal Rules of Civil Procedure and this case was therefore tried non-jury. Each side presented evidence to the Court.

The Court in corporates into this Judgment its Ruling dated November 27, 2000, as if fully set forth herein and adopts its rulings and Findings of Fact and Conclusions of Law contained therein.

The Court, after considering all of the evidence, finds that Defendant C&F, acting by and through its agents and/or employees, was negligent and that such negligence was a proximate cause of the occurrence and injuries in question. The Court further finds that Plaintiff Dudley Foussell was negligent on the occasion in question and that such negligence was a proximate cause of the occurrence in question. The court further finds that Parker and

Meridian were not negligent, and that the M/V Margaret was not unseaworthy. The Court apportions the comparative fault of each party and finds that 75% of the negligence is attributable to Plaintiff Dudley Foussell and that 25% of the negligence is attributable to Defendant C&F. The Court awards damages to Plaintiff Dudley Foussell and to Parker pursuant to its indemnity claim as follows:

1. Back and Neck Injury

The Court awards to Parker and against C & F the amounts Parker has paid in past cure for Plaintiff's neck and back injuries: $1,098.00 paid to Dr. Delmare Walker, $759.00 paid to Terrebonne General Medical Center; $191.00 paid to Houma radiology Associates; $895.00 paid to Terrebonne Physical Therapy; $6,513.56 paid to Dr. Kenneth Adatto; $924.00 paid to Dr. Gerald F. Burns; $935.00 paid to Dr. Jacobs; and $205.88 Parker has paid for prescription expenses. A total amount of $11,521.44 is awarded to Parker and against C & F for past cure paid to Plaintiff for his neck and back injury.

The Court awards to Plaintiff and against C & F the amounts Parker has not paid in past Cure by virtue of its claim adjustment policies or other reasons: $2,454.64 for treatment by Dr. Adatto; $141.00 for treatment by Dr. Gerald Burns; $975.00 for treatment by Dr. Sherman Brown; and $1,432.38 for prescription expenses. A total amount of $5,003.02 is awarded to Plaintiff and against C & F for past cure for Plaintiff's neck and back injury.

The Court denies Plaintiff's claim against Parker for cure and against C&F for damages as to the $42,283.93 representing the cost of the anterior fusion and its related

costs. The Court denies Plaintiff's claim for future medical expenses and future cure for his back and neck.

2. Loss of Time Incidents/Seizures

The Court awards Plaintiff no past or future damages from C&F or past or future cure from Parker resulting from Plaintiff's alleged loss of time incidents/seizures. The Court denies Plaintiff's claims against C&F and against Parker for maintenance and cure relating to treatment of Plaintiff's alleged loss of time incidents/seizures.

3. Hallucinations

The Court awards Plaintiff Foussell no damages for past or future maintenance and cure and denies Plaintiff's claim against C&F for past or future damages relating to Plaintiff's alleged hallucinations. The Court denies Plaintiff's claims against C&F and against Parker for maintenance and cure relating to treatment of Plaintiff's alleged hallucinations.

4. Headaches

The Court awards Plaintiff $1,452.75 in past cure for his neurological treatment.

The Court denies any future cure for Plaintiff's headaches. The Court awards to Plaintiff as against C&F future medical damages, reduced by Plaintiff's 75% comparative fault, for the full cost of one year's additional treatment by Dr. Elliott and the cost of one year's additional medication; a net sum to Plaintiff in the amount of $561.00. The Court denies Plaintiff's claim for medical damages as to future treatment by Dr. Schwartz.

5. Bladder/Erectile Dysfunction

The Court awards Plaintiff $16,231.06 as past medical cure for his past erectile and bladder dysfunction. Of this amount, Parker has already paid to Plaintiff or on behalf of Plaintiff $4,558.28. A total amount of $11,672.78 is therefore awarded to Plaintiff and against C&F for past cure for his erectile and bladder dysfunction not paid by Parker, and $4,558.28 is awarded to Parker and against C&F for past cure paid to Plaintiff for his erectile and bladder dysfunction.

The Court denies Plaintiff's claim for future cure for bladder/erectile dysfunction. The Court further denies Plaintiff's claim for future medical damages against C&F for future treatment or expenses of Plaintiff's bladder/erectile dysfunction.

6. Depression

The Court awards Plaintiff $5,360.53 as cure for past psychological/psychiatric treatment. Plaintiff's claim for future cure for his depression is denied. The Court awards to Plaintiff as against C&F future medical damages, reduced by Plaintiff's 75% comparative fault, for the full cost of one year's additional treatment by Dr. McSherry and the cost of one year's Paxil medication; a net sum to Plaintiff in the amount of $257.50.

7. Economic Damages

The Court awards Plaintiff $119,022 for past and future loss of wages; $40,285.00 for past loss and $78,737.00 for future loss. Said amounts are reduced by Plaintiff's comparative fault of 75% and thus represents a

net award to Plaintiff and against C&F in the amount of $29,755.50.

8. Pain and Suffering/Mental Anguish

The Court awards Plaintiff $125,000 for pain and suffering against C&F. This award is reduced by Plaintiff's 75% comparative fault and results in a net award to Plaintiff of $31,250.00.

9. Maintenance Payments

The Court awards to Parker and against C&F $21,580.00, representing the maintenance payments Parker has made to Plaintiff.

It is therefore **ORDERED** by the Court that Plaintiff recover from Defendant C&F, the amount of $23,489.08 in past cure.

It is further **ORDERED** by the Court that Parker recover from Defendant C&F, the amount of $16,079.72, representing the past cure paid by Parker to or on behalf of Plaintiff.

It is further **ORDERED** that Plaintiff recover from Defendant C&F the total sum of $61,824.00 as economic, future medical and general damages. Plaintiff is also awarded pre-judgment interest at the rate of 5.58% from 16th day of August, 1997 through the present on all damages awarded against C&F, with the exception of the future economic damage award ($19,684.25) and the future medical expenses ($818.50). Plaintiff Foussell is also awarded post-judgment interest on the award against

C&F from the date of this judgment at the prevailing rate until paid.

It is further **ORDERED** that Parker is awarded post-judgment interest on the award of maintenance and cure against C&F from the date of this judgment at the prevailing rate until paid.

The parties are allowed such writs and process as may be necessary in the enforcement and collection of this judgment.

All relief not expressly granted herein is denied.

Done in Lafayette, Louisiana this 20 day of December 2000.

/s/ [Illegible]
UNITED STATES
DISTRICT JUDGE

APPROVED AS TO FORM:

By: /s/ Kurt Siess
Kurt Siess
SBN: 18345485
1100 Louisiana, Suite 3050
Houston, Texas 77002
Telephone: (713) 757-1400
Telecopier: (713) 759-1217
ATTORNEY IN CHARGE
FOR PLAINTIFF

By: /s/ David C. Redford
David C. Redford
SBN: 16666000
Davis Oretsky & Guilfoyle, P.C.
1415 Louisiana, Suite 4200
Houston, Texas 77002
Telephone: (713) 659-1010
Telecopier: (713) 659-1122
ATTORNEY IN CHARGE FOR DEFENDANTS PARKER DRILLING U.S.A., THE MERIDIAN RESOURCES CORPORATION AND THE MERIDIAN RESOURCE & EXPLORATION COMPANY:

By: /s/ James M. Kimbell
James M. Kimbell
State Bar No. 11420000
Bijan R. Siahatgar
State Bar No. 18336200
Griggs & Harrison, P.C.
1301 McKinney, Suite 3200
Houston, Texas 77010-3033
(713) 651-0600 – Telephone
(713) 651-1944 – Facsimile
ATTORNEYS-IN-CHARGE FOR DEFENDANT C&F OFFSHORE SERVICES, INCORPORATED